

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for a Commission finding that its Procurement-Related and Other Operations for the Recorded Period July 1 Through December 31, 2003 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account; for Recovery of a Nuclear Unit Incentive Reward of \$9.7 million; and for Recovery of \$4.9 Million Recorded in the Electric Energy Transition Administration Memorandum Account.

Application 04-04-005  
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON A MOTION TO STRIKE TESTIMONY**

On October 13, 2004, Southern California Edison Company (SCE) filed a motion to strike the Office of Ratepayer Advocates (ORA) Exhibit E in its entirety, portions of ORA's Exhibits 5 and F as specified in SCE's motion, and related oral testimony specified in SCE's motion.<sup>1</sup> That motion was made on the basis that ORA had purported to review matters in this proceeding under the traditional standards of an after-the-fact reasonableness review, the evidence in question dealt with matters beyond the scope of this proceeding, and that

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<sup>1</sup> Exhibit 5 was placed in the public record and Exhibits E and F were placed under seal.

Exhibit E and related testimony was submitted at the evidentiary hearing without justification.

On October 29, 2004, ORA filed a response to SCE's motion and on November 4, 2004, SCE filed a reply to ORA's response.

I have reviewed and considered SCE's motion, ORA's response, and SCE's reply. I have also reviewed the related transcripts. Those transcripts show that SCE's Counsel stated that SCE would stipulate to the admission into evidence of ORA's report,<sup>2</sup> and that ORA subsequently introduced its report into the record as Exhibit 5, and F. Those transcripts also show that ORA introduced Exhibit E into the record, an exhibit not previously seen by SCE.

Upon the request of SCE, I provided SCE a one-day continuance of the evidentiary hearing so that SCE's witness could analyze and consider providing rebuttal testimony related to Exhibit E. Upon receiving no objection from SCE and ORA to the receipt of Exhibits 5, E, and F into the record, I received those exhibits into evidence.<sup>3</sup>

SCE had ample opportunity at the evidentiary hearing to object to the receipt of those exhibits into evidence. However, it did not object. SCE did exercise its requested option to provide a rebuttal witness to Exhibit E. Not only did SCE's witness rebut that exhibit, the witness introduced and testified on an additional new exhibit, Exhibit G. Similar to the other exhibits in question, Exhibit G was received into evidence without any objection from SCE or ORA.<sup>4</sup> SCE's motion to strike testimony received into evidence without its objection

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<sup>2</sup> Reporter's Transcript Vol. 2, p. 44, Line 13 and 14.

<sup>3</sup> *Id.* p.66, lines 17 through 28.

<sup>4</sup> *Id.* p.92.

almost one month prior to the filing of its motion and concurrent with the filing of its opening brief is untimely and should be denied.

**IT IS RULED** that Southern California Edison Company's motion to strike the Office of Ratepayer Advocates (ORA) Exhibit E in its entirety, portions of ORA's Exhibits 5 and F as specified in SCE's motion, and related oral testimony specified in SCE's motion is denied.

Dated November 22, 2004, at San Francisco, California.

/s/ Michael J. Galvin  
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Michael J. Galvin  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on a Motion to Strike Testimony on all parties of record in this proceeding or their attorneys of record.

Dated November 22, 2004, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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